

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chops Holdings, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1263 & 13R 487

Decision and Order Affirming the
Determination of the Douglas County Board
of Equalization

For the Appellant:

David Paladino,
Member, Chops Holdings, LLC.

For the Appellee:

Jimmie Pinkham III,
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 2,960 square foot single family rental home located at 123 North 38th Avenue, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record cards for the Subject Property are found at Exhibits 245 and 246.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$97,300 for both tax years 2012 and 2013.¹ Chops Holdings, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value for tax year 2012 of \$65,000,² and an assessed value of \$86,300 for tax year 2013.³ The County Board determined that the taxable value for both tax years 2012 and 2013 was \$97,300.⁴ The Taxpayer appealed the decisions of the County Board to

¹ See, E85 and E86.

² See, E245:32.

³ See, E246:33.

⁴ See, E85 and E86.

the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 19, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁵ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁶

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was arbitrary or unreasonable.¹¹

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may

⁵ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹¹ *Bottomf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹² The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁵

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁶ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁷ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Id.*

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

David Paladino, member of Chops Holdings, LLC, testified to his opinion that the four most important considerations to be made when determining whether a sale is appropriate for use as a comparable property are the following: (1) time of sale; (2) size; (3) proximity to the Subject Property; and (4) style of the improvements. Paladino asserted that the Assessor's comparable properties contained in the Assessment Report for both tax years 2012 and 2013 were not located in the same neighborhood as the Subject Property. Paladino asserted that his comparable properties presented to the County Board at the time of his protests were obtained from a multiple listing service and had much better proximity to the Subject Property.²¹ Paladino expressed an opinion of value of \$65,000 for tax year 2012 and \$86,300 for tax year 2013. Paladino asserted that the difference in value was the result of the change in the relevant market from 2012 to 2013. The Taxpayer offered no evidence to quantify his opinion regarding the market change.

Paladino did not bring any documentation confirming the quality, condition, or size of any of his alleged comparable properties, including property record files. Paladino admitted that without further documentation it would be difficult to truly compare the Subject Property with his comparable properties.

The Commission received the testimony of Larry Thomsen, an employee of the Assessor as a supervisor for residential assessments and the head of the Assessor's section regarding residential appeals. Thomsen identified the Subject Property as being located in neighborhood 15.²² He testified that the Assessor's Comparable #1 was one of the sales contained in the Assessor's universe of sales that were available for use in the mass appraisal model. Thomsen testified that none of the Assessor's comparable properties listed in the Assessment Reports²³ were located in the same neighborhood as the Subject Property. Thomsen testified that the Assessor chose the comparable properties because there were no sales within the Subject Property's neighborhood or neighborhood extension available for review, because very few two and one-half story homes sold in the neighborhood of the Subject Property during the relevant

²¹ See, E245: 32 (Taxpayer's comparable properties at the County Board protest).

²² See also E245:11.

²³ See E245 and E246.

time period. Thomsen testified that the Taxpayer's comparable properties #1 and #2 used in the protest proceedings were more comparable to the Subject Property than the Assessor's comparable properties found in the Assessment Report.²⁴

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁵ Competent evidence is relevant and material evidence or that evidence, "which the very nature of the thing to be proven requires."²⁶ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁷ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁸ Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.²⁹ A mere difference of opinion is insufficient to meet the Taxpayer's burden.³⁰

David Paladino testified on behalf of the Taxpayer and asserted that the Subject Property was overassessed because the County Board had not adequately taken into account sales of comparable properties located close to the Subject Property, and had used as comparable properties residences located in other neighborhoods. Paladino listed sales of residences that he felt were more comparable to the Subject Property, but he did not bring any documentation to confirm the characteristics of the properties or the circumstances of the sales of the properties. Paladino offered an alternative opinion of value for the Subject Property for both tax years 2012 and 2013. The Commission finds that Paladino's testimony is competent evidence sufficient to rebut the presumption in favor of the County Board's determinations of taxable value since he was the owner of the Subject Property who was familiar with the worth of the property.

²⁴ See, E245:32 (Taxpayer's comparable properties at the time of the protest proceedings).

²⁵ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²⁶ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁷ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁸ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

²⁹ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013).

³⁰ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 125-26, 825 N.W.2d 447, 452 (2013).

However, the Commission finds that the Taxpayer did not produce clear and convincing evidence that Paladino's assertions established that the County Board's determinations of taxable value were arbitrary or unreasonable. Without further documentation concerning the characteristics of Paladino's comparable properties the Commission is unable to properly analyze the strengths and weaknesses of Paladino's assertions. The burden on the Taxpayer is to provide clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.³¹ "Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."³² The evidence presented in this appeal is not sufficient to produce "a firm belief or conviction" that the County Board's determinations of taxable value were arbitrary or unreasonable. The Commission finds that Paladino's assertions constitute a mere difference of opinion. The County Board's determinations of taxable value should be affirmed.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's determinations of taxable value were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Property for tax years 2012 and 2013 are affirmed.
2. The taxable value of the Subject Property for both tax years 2012 and 2013 is \$97,300.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

³¹ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013).

³² *State v. Payne-McCoy*, 284 Neb. 302, 308, 818 N.W.2d 608, 616 (2012) (Citing *State v. Floyd*, 277 Neb. 502, 763 N.W.2d 91 (2009)).

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2012 and 2013.
7. This Decision and Order is effective for purposes of appeal on January 8, 2015.³³

Signed and Sealed: January 8, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³³ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.